



MEMO ENDORSED

USDC SDNY
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March 3, 2020

VIA ECF

Hon. Valerie E. Caproni
United States District Judge
United States District Court for the Southern District of New York
40 Foley Square, Courtroom 443
New York, NY 10007

**Re: *Calcano v. Drybar Holdings LLC*,
Civil Action No.: 1:19-cv-11389-VEC (S.D.N.Y.)**

Dear Judge Caproni:

This Firm represents Defendant Drybar Holdings LLC (“Drybar” or “Defendant”) in the above-referenced matter. We have conferred with Plaintiff’s counsel and write, with Plaintiff’s concurrence, to jointly request a stay of this action until August 3, 2020.

By way of background, the Court stayed Defendant’s time to respond to the Complaint until the date of the Initial Pretrial Conference which is April 17, 2020. If the Court does not stay this matter, Defendant will file a motion to dismiss by this date.

The parties respectfully request that this action be stayed to allow for the resolution of motions to dismiss in similar matters arising out of gift cards that do not include Braille, which are currently pending before the Court and other judges in this District and the Eastern District of New York. The stay would allow the parties to have the benefit of the Court’s analysis of the issues in other matters, which will inform their assessment of the pending case. It will also conserve resources of both the parties and the Court. Similar stays were recently granted on the same grounds by Judge Woods in *Calcano v. Domino’s Pizza, Inc.*, Case No. 1:19-cv-09823-GHW (S.D.N.Y.) (ECF No. 24) and *Delacruz v. Jamba Juice*, Case No. 1:19-cv-10321-GHW (S.D.N.Y.) (ECF No. 20), and by Judge Abrams in *Delacruz v. Five Below, Inc.*, Case No. 1:19-cv-10294-RA (S.D.N.Y.) (ECF No. 16). These orders are enclosed for the Court’s convenience.

We thank the Court for its time and attention to this matter, and for its consideration of this application.



Hon. Valerie E. Caproni
March 3, 2020
Page 2

Respectfully submitted,
SEYFARTH SHAW LLP

/s/ John W. Egan

John W. Egan

Enclosures

cc: All counsel of record (via ECF)

Application GRANTED. This case is STAYED until **August 3, 2020** to permit the resolution of motions to dismiss in similar matters currently pending before the Court and elsewhere in this district. The initial pretrial conference scheduled for April 17, 2020 is adjourned sine die. The parties are directed to submit a joint status letter to the Court no later than **July 27, 2020**. In addition, no later than five days after the issuance of any opinion in this district relevant to the claims asserted in this case, the parties are directed to submit a joint letter addressing the impact of the decision on this case and the continued need for a stay.

SO ORDERED.

A handwritten signature in blue ink, reading 'Valerie Caproni'.

3/3/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

EXHIBIT A

STAYED,ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:19-cv-09823-GHW

Calcano v. Domino's Pizza, Inc.
Assigned to: Judge Gregory H. Woods
Cause: 28:1331 Fed. Question

Date Filed: 10/24/2019
Jury Demand: Plaintiff
Nature of Suit: 446 Civil Rights: Americans with Disabilities - Other
Jurisdiction: Federal Question

Plaintiff

Marcos Calcano
On Behalf Of Himself And All Other Persons Similarly Situated

represented by **Bradly Gurion Marks**
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ATTORNEY TO BE NOTICED

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V.

Defendant

Domino's Pizza, Inc.

represented by **Joseph A. Piesco**
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TERMINATED: 01/09/2020
LEAD ATTORNEY

02/21/2020		Minute Entry for proceedings held before Judge Gregory H. Woods: Telephone Conference held on 2/21/2020. (Court Reporter Lisa Smith) (Daniels, Anthony) (Entered: 02/21/2020)
02/24/2020	24	ORDER. As discussed during the February 21, 2020 teleconference, this case is stayed to permit the resolution of motions to dismiss in similar matters currently pending before the Court and elsewhere in this district. The stay will remain in effect until July 21, 2020 or such earlier date as the Court may determine. The parties are directed to submit a joint status letter to the Court no later than July 14, 2020. In addition, no later than five days following the issuance of any opinion(s) in the Second Circuit evaluating the merits of claims such as those advanced by Plaintiff here, the parties are directed to submit a joint status letter addressing the impact of the decision(s) on the viability of this case and the continued need for a stay. (HEREBY ORDERED by Judge Gregory H. Woods) (Text Only Order) (Daniels, Anthony) (Entered: 02/24/2020)
02/24/2020		Case Stayed. (ama) (Entered: 02/24/2020)

EXHIBIT B

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DATE FILED: 02/26/20

February 24, 2020

Via CM/ECF

The Honorable Gregory H. Woods
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMORANDUM ENDORSED

**Re: *Delacruz v. Jamba Juice*
Case No. 1:19-cv-10321**

Dear Judge Woods:

The undersigned represents Jamba Juice Company, Defendant in the above-referenced matter (“Defendant”). Pursuant to Local Civil Rule 7.1(d) and Rule 1.E. of Your Honor’s Individual Practices and Rules, the undersigned and counsel for Plaintiff jointly write to request a stay of this action. The stay is requested to allow for the resolution of motions to dismiss in similar matters, alleging violations of the ADA arising out of gift cards which do include Braille, currently pending before the Court and before other judges in the district. The stay would allow the parties to review any decision issued in these matters and has the potential to substantially conserve the resources of both the parties and the Court. A similar stay was recently granted by the Court on the same grounds in *Calcano v. Domino’s Pizza, Inc.*, Case No. 1:19-cv-09823-GHW (S.D.N.Y.). The only deadline impacted by the proposed stay is the February 24, 2020, deadline for Defendant to file its motion to dismiss.

The undersigned has conferred with counsel for Plaintiff, and the parties jointly seek the requested relief.

Alternatively, should the Court not grant the requested stay, Defendant requests a 10-day enlargement of time, up to and including, March 5, 2020, to file its motion to dismiss. Defendant's current deadline to move to dismiss the Class Action Complaint is February 24, 2020. The undersigned has conferred with counsel for Plaintiff regarding this request, and they consent to the extension. This is the Defendant's second request for an extension of time.

Thank you in advance for your consideration of this matter.

Respectfully submitted,

/s/ Alexander P. Fuchs
Alexander P. Fuchs
Attorney for Jamba Juice Company

APF/fa

Cc: Jeffrey M. Gottlieb (via ECF)
Dana L. Gottlieb (via ECF)

Application granted. This case is stayed to permit the resolution of motions to dismiss in similar matters currently pending before the Court and elsewhere in this district. The stay will remain in effect until July 21, 2020 or such earlier date as the Court may determine. The parties are directed to submit a joint status letter to the Court no later than July 14, 2020. In addition, no later than five days following the issuance of any opinion(s) in the Second Circuit evaluating the merits of claims such as those advanced by Plaintiff here, the parties are directed to submit a joint status letter addressing the impact of the decision(s) on the viability of this case and the continued need for a stay.

SO ORDERED.

Dated: February 26, 2020
New York, New York

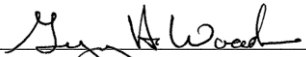

GREGORY H. WOODS
United States District Judge

EXHIBIT C

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February 27, 2020

Hon. Ronnie Abrams, U.S.D.J.
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2203
New York, NY 10007

Re: *Delacruz v. Five Below, Inc.*
Civil Action No.: 19-cv-10294 (RA)

MEMO ENDORSED

USDC-SDNY
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DATE FILED: 2/28/20

Dear Judge Abrams:

Blank Rome represents Five Below, Inc. ("Defendant") in the above-referenced matter. In accord with Your Honor's Individual Rules and Practices, we write, jointly with Plaintiff's counsel and with his consent, to respectfully request a stay of this matter pending the resolution of the motion to dismiss pending before the Court in *Henry Tucker v. Whole Foods Market Group, Inc.*, No. 19-cv-9842 (RA).

The plaintiff in *Tucker* asserts identical claims as those asserted in this case. Your Honor's decision on the defendant's motion to dismiss in that action will therefore have a significant impact on this case, as it will help clarify and possibly narrow the issues in the matter and help Defendant determine how to respond to the Complaint.¹ Therefore, staying this matter pending the resolution of the defendant's motion to dismiss in *Tucker* is in the interest of judicial economy and will help conserve both the parties' and the Court's time and resources. A stay was entered for similar reasons in two other cases pending before this Court which assert identical claims, *Calcano v. Domino's Pizza*, No. 19-cv-9823 (see Docket Entry No. 24, in which the Hon. Gregory H. Woods entered an Order providing, among other things, that "this case is stayed to permit the resolution

¹ Defendant notes that motions to dismiss have also been filed by the defendants in at least two other cases pending before your Honor which also assert identical claims as those asserted in this case, *Braulio Thorne v. Boston Market Corporation*, No. 19-cv-9932 (RA) and *Marcos Calcano v. LuLuLemon USA Inc.*, No. 19-cv-10430 (RA). However, unlike the motion to dismiss filed in the *Tucker* case, the motions to dismiss in these two other cases have not yet been fully briefed by the parties. Nevertheless, Your Honor's ruling on those motions will also have a significant impact on the parties' claims and defenses, and how the Defendant will respond to the Complaint, in this case.

BLANKROME

Judge Abrams
February 27, 2020
Page 2

of motions to dismiss in similar matters currently pending before the Court and elsewhere in this District” and staying the case until July 21, 2020), and *Delacruz v. Jamba Juice Company*, No. 19-cv-10321 (same order in another case pending before Judge Woods, *see* D.E. 20).

The parties further propose that Defendant will file its response to the Complaint within fourteen (14) days of the Court’s order on Whole Foods’ motion to dismiss, and that the Initial Conference in the case will be scheduled within thirty (30) days of such ruling.

In the alternative, if the Court is not inclined to stay this matter, Defendant writes to request a thirty (30) day extension of time from the Court’s determination of this letter motion to answer, move, or otherwise respond to the Complaint. Defendant’s response to the Complaint is currently due on March 2, 2020. This is the third request for an extension of time, and the Court has granted the parties’ first two requests. The parties further request the initial conference, currently scheduled for March 20, 2020, be adjourned thirty (30) days from the date Defendant must file a response to the Complaint. Plaintiff consents to these proposed extensions, and the requested extensions will not prejudice any party to this action.

Accordingly, the parties respectfully request that this matter be stayed pending the Court’s determination of the motion to dismiss filed by the defendant in the *Tucker v. Whole Foods* action or, in the alternative, that Defendant be granted a thirty (30) day extension of time to answer, move, or otherwise respond to the Complaint.

We appreciate Your Honor’s consideration of this request, and thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Anthony A. Mingione

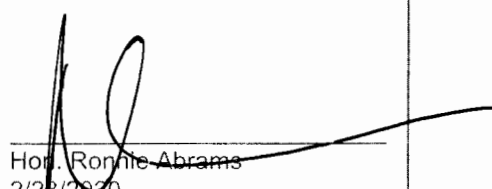
Anthony A. Mingione

cc: All Counsel of Record

Application granted. This action is stayed pending the resolution of the motion to dismiss in *Tucker v. Whole Foods Market Group, Inc.*, No. 19-cv-9842. Defendant shall respond to the Complaint within 14 days of the Court’s decision on the motion to dismiss in *Tucker*.

The initial conference scheduled for March 20, 2020 is hereby adjourned *sine die*.

SO ORDERED.


Hon. Ronnie Abrams
2/28/2020